

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

AGRIFUND, LLC d/b/a AG RESOURCE	*	
MANAGEMENT,	*	
	*	
Plaintiff,	*	
	*	
v.	*	CV 320-050
	*	
D AND D FAMILY FARMS, LLC and	*	
JONATHAN C. DAVIS,	*	
	*	
Defendants.	*	

O R D E R

On July 30, 2020, Plaintiff Agrifund, LLC d/b/a AG Resource Management brought this suit to collect on two promissory notes executed by Defendants D and D Family Farms, LLC and Jonathan C. Davis. The subject promissory notes are attached to the Amended Complaint as Exhibits A and C. (Doc. No. 11.)

Defendants were served with process but have failed to appear, plead or otherwise defend the action. Consequently, the Clerk entered default against Defendants on September 14, 2020. On October 22, 2020, Plaintiff filed the instant motion for default judgment, seeking the principal amount of the balance owing on each note plus interest, attorney's fees and costs.

"Defendant's default does not in itself warrant the court in entering a default judgment. There must be a sufficient basis in the pleadings for a judgment entered The defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law." Nishimatsu Constr. Co. v. Houston Nat'l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975). A defendant, by his default, is only deemed to have admitted the "plaintiff's well-pleaded allegations of fact." Id. "[T]hree distinct matters [are] essential in considering any default judgment: (1) jurisdiction; (2) liability; and (3) damages." Pitts ex rel. Pitts v. Senecar Sports, Inc., 321 F. Supp. 2d 1353, 1356 (S.D. Ga. 2004).

1. Jurisdiction

The parties in this case are diverse: Plaintiff is a Delaware corporation with its principal place of business in Texas. (Am. Compl. ¶ 1.) Defendants are all citizens of Georgia. (Id. ¶¶ 2 & 3.) The amount in controversy exceeds \$75,000. The Court therefore has subject matter jurisdiction over this case. Moreover, this Court has personal jurisdiction over Defendants as residents of the State of Georgia.

2. Liability

Plaintiff has attached to the Amended Complaint the two promissory notes together with their respective security agreements and UCC financing statements. The first promissory note (hereinafter "Note 1") was executed by Defendants on September 9, 2019, with a maturity date of February 15, 2020. (Am. Compl., Ex. A.) Note 1 provides for interest on any unpaid principal balance at a rate of 10% per annum. It also provides for a "default rate increase" of 6% per annum over the original interest rate in the event of Defendants' default. Finally, Note 1 obligates Defendants to pay reasonable attorney's fees in the amount of 15% of the principal and interest due plus court costs. (Id. at 1.) On July 10, 2020, Plaintiff's attorney sent a demand for payment letter by certified mail to Defendants, noting the amount past due and owing was \$165,969.31 as of July 7, 2020. (Am. Compl., Ex. B.) Defendants were further advised that they would owe attorney's fees and costs if payment was not made and were forewarned of this lawsuit. (Id.)

The second promissory note (hereinafter Note 2) had a maturity date of July 15, 2020 and provides for an interest rate of 10.25% per annum with a default rate increase of 6% per annum. (Am.

Compl., Ex. C.) Note 2 also obligates Defendants to pay reasonable attorney's fees in the amount of 15% of the principal and interest due plus court costs. (Id. at 1.) On July 10, 2020, Plaintiff's attorney sent a demand for payment letter by certified mail to Defendants, noting the amount past due and owing was \$175,547.10 as of July 6, 2020. (Am. Compl., Ex. D.) Defendants were further advised that they would owe attorney's fees and costs if payment was not made and were forewarned of this lawsuit. (Id.)

Defendants have not answered this lawsuit or otherwise defended, and there is no evidence of record that Defendants have ever disputed the amount due in the demand letters or their obligations under the promissory notes. Further, the Amended Complaint alleges that each promissory note has matured and has become due and payable in full at this time. (Id. ¶¶ 7 & 14.) Accordingly, the Court concludes that Defendants are liable to Plaintiff for the principal amount due and owing under each promissory note, plus interest to include the default rate increase, and attorney's fees and court costs.

3. Damages

No evidentiary hearing on damages is required where all essential evidence is already of record. S.E.C. v. Smyth, 420

F.3d 1225, 1232 n.13 (11th Cir. 2005). Here, Plaintiff's claims under the two promissory notes are for a sum certain as evidenced by the supporting affidavit of Teresa Youmans, Market Leader and record custodian of the relevant files, and by the loan history reports attached thereto. (See Mot. for Default J., Doc. No. 12, Exs. 3-5.)

According to the loan history report for Note 1, the account was credited, presumably by payments, in the amount of \$109,770 in between the demand letter and time of filing the motion for default judgment. (Id. Ex. 4.) Thus, as of October 16, 2020, Defendants owe \$85,023.84 with respect to Note 1, which includes interest and attorney's fees and costs.¹ (Youmans Aff. ¶ 16.) As to Note 2, Defendants owe \$208,196.97, which includes interest and attorney's fees.² (Id. ¶ 17.) The Court finds that these amounts have been reasonably ascertained and are supported by the evidence of record.


¹ The attorney's fees on Note 1 in the amount of 15% are claimed to be \$24,895.39. Costs include \$400 for the filing fee and \$300 for service of process.

² The attorney's fees on Note 2 are \$26,332.06.

Conclusion

Upon the foregoing, Plaintiff's motion for default judgment (doc. no. 12) is **GRANTED**. The Clerk of Court is directed to **ENTER JUDGMENT** in favor of Plaintiff Agrifund, LLC and against Defendants, jointly and severally, on Count One (pertaining to Note 1) in the amount of \$85,023.84 and on Count Two (pertaining to Note 2) in the amount of \$208,196.97. The Clerk is further directed to **CLOSE** this case.

ORDER ENTERED at Augusta, Georgia, this 11th day of December, 2020.


UNITED STATES DISTRICT JUDGE